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ORIGINAL

# 46946  
CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
CIVIL DIVISION

DEPUTY CLERK

NY

DERWIN COCKERHAM,  
Plaintiff,

vs.

MATTHEW K. ROSE, CEO OF BNSF  
RAILWAY COMPANY, JASON  
WATKINS, AND BNSF RAILWAY  
COMPANY,  
Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

**3-11 CV 0277-B**

**PLAINTIFF, DERWIN COCKERHAM'S, ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Derwin Cockerham, hereinafter called Plaintiff, complaining of and about Matthew K. Rose, CEO of BNSF Railway Company; Jason Watkins; and BNSF Railway Company, hereinafter called Defendants, and for cause of action shows unto the Court the following:

**PARTIES AND SERVICE**

1. Plaintiff Derwin Cockerham, is a citizen of the United States and the State of Texas and resides in Tarrant County, Texas.
2. Defendant, Matthew K. Rose, CEO of BNSF Railway Company, may be served at 2650 Lou Menk Drive, Fort Worth, Texas or wherever he may be found.
3. Defendant, Jason Watkins, may be served at 2650 Lou Menk Drive, Fort Worth, Texas or wherever he may be found.
4. Defendant BNSF Railway Company may be served by serving CT Corporation System, its agent authorized to accept service at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

### **JURISDICTION**

5. The action arises under Title VII of the Civil Rights Act of 1964, as amended as hereinafter more fully appears.

6. This Court has supplemental jurisdiction over state law claims discussed below under 28 U.S.C. Section 1367(a) because they arise out of the same case or controversy.

### **NATURE OF ACTION**

7. This is an action under Title 42 U.S.C. Section 2000e et. seq. and 42 U.S.C. Section 1981 as amended by the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race and color.

### **CONDITIONS PRECEDENT**

8. All conditions precedent to jurisdiction have occurred or been complied with: a charge of discrimination was filed with the Equal Employment Opportunity Commission within three hundred days of the acts complained of herein and Plaintiff's Complaint is filed within ninety days of Plaintiff's receipt of the Equal Employment Opportunity Commission's issuance of a right to sue letter.

### **FACTS**

9. Plaintiff was advised in a letter dated July 8, 2010 from Bruce D. Teel, Division Engineer, that his employment was being terminated for charging time that was not worked on May 15, 2010.

10. The following is Plaintiff's rendition of non-African Americans being treated differently than him on the same issue:

Caucasian employees are routinely handled in a different manner referencing payroll errors. I was dismissed on July 12 for what is described as errors in time keeping

reports resulting in a potential for me to have received a one-time payment of \$232.00. Due to work overtime that was to be billed for a derailment incident and for which I was called into work, but for work that was not actually performed due to the employer calling in contractors to perform said repairs; and after having requested guidance from my immediate Supervisor, Defendant Jason Watkins, as to whether I should bill the company for my time during this incident, I was instructed by Supervisor Watkins to insert my timesheet electronically into the company's computer system for the work that should have been performed. This oversight was discovered prior to disbursement, which could have been corrected by me, or Defendant Jason Watkins, my immediate supervisor. I did not actually receive any portion of the \$232.00 or any other unauthorized funds. Oddly, prior to my event, when faced with a similar circumstance of a Caucasian employee, Supervisor Watkins went to great lengths to insure that no discipline was considered or assessed. Supervisor Watkins and Mark Degano discovered that employee Justin Vaughn was physically paid and received tangible funds inaccurately; for days that he did not perform service in the amount of approximately (\$1500.00); and, Mr. Watkins and Mr. Degano personally arranged for the erroneous amounts to be repaid or financed back to BNSF via payroll deduction installments extending over several pay periods. Mr. Vaughn was delighted at this arrangement and boasted about the special handling he received. Second, in another similar incident on record involving unauthorized payments to several Caucasian employees, Mr. Watkins again arranged special handling via payroll deductions for these employees after they received payments in excess of their actual hours worked. It is my understanding that Cal

Dodson sometime was responsible for insuring that payroll deductions were used to repay BNSF after he made mistakes on putting time into PARS/PAYROLL. It is also my understanding that not one of these Caucasian employees received any form of discipline or termination.

### **RACE AND COLOR DISCRIMINATION**

11. Defendants, Matthew K. Rose, CEO of the BNSF Railway Company, Jason Watkins, and BNSF Railway Company, intentionally engaged in unlawful employment practices involving Plaintiff because of his race and color.

12. Defendants, Matthew K. Rose, CEO of the BNSF Railway Company, Jason Watkins, and BNSF Railway Company, discriminated against Plaintiff in connection with the compensation, terms, conditions and privileges of employment or limited, segregated or classified Plaintiff in a manner that would deprive or tend to deprive him of any employment opportunity or adversely affect his status because of Plaintiff's race and color in violation of 42 U.S.C. Section 2000e (2)(a).

13. Defendants, Matthew K. Rose, CEO of the BNSF Railway Company, Jason Watkins, and BNSF Railway Company, classified Plaintiff in a manner that deprived him of an equal employment opportunity that was provided to other non-black employees similarly situated in violation of 42 U.S.C. Section 2000e (2)(a).

14. Plaintiff alleges that Defendants, Matthew K. Rose, CEO of the BNSF Railway Company, Jason Watkins, and BNSF Railway Company, discriminated against Plaintiff on the basis of race and color with malice or with reckless indifference to the federal-protected rights of Plaintiff.

15. Defendant, BNSF Railway Company, also violated Plaintiff's rights under 42 U.S.C. Section 1981.

### **RETALIATION BY BNSF RAILWAY COMPANY**

16. Plaintiff alleges that Defendants, Matthew K. Rose, CEO of the BNSF Railway Company, Jason Watkins, and BNSF Railway Company instituted a campaign of retaliation which included firing Plaintiff from his job. This retaliation was and is due to Plaintiff exercising his rights by opposing a discriminatory practice. Plaintiff suffered damages for which Plaintiff herein sues.

### **DAMAGES**

17. Plaintiff sustained the following damages as a result of the actions and/or omissions of Defendant described hereinabove:

- a. The loss of his employment with all seniority accrued and benefits earned;
- b. All reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiff;
- c. Back pay from the date that Plaintiff was denied equal pay for equal work and interest on the back pay in an amount to compensate Plaintiff as the Court deems equitable and just;
- d. All reasonable and necessary costs incurred in pursuit of this suit;
- e. Emotional pain;
- f. Expert fees as the Court deems appropriate;
- g. Front pay in an amount the Court deems equitable and just to make Plaintiff whole;
- h. Inconvenience;
- i. Interest;
- j. Loss of enjoyment of life;
- k. Mental anguish in the past;
- l. Mental anguish in the future;

- m. Loss of earnings in the past;
- n. Loss of earning capacity which will, in all probability, be incurred in the future; and
- o. Loss of benefits.

#### **EXEMPLARY DAMAGES**

18. Plaintiff would further show that the acts and omissions of Defendant complained of herein were committed with malice or reckless indifference to the protected rights of the Plaintiff. In order to punish said Defendant for engaging in unlawful business practices and to deter such actions and/or omissions in the future, Plaintiff also seeks recovery from Defendant for exemplary damages.

#### **SPECIFIC RELIEF**

19. Plaintiff seeks the following specific relief which arises out of the actions and/or omissions of Defendant described hereinabove:

- a. Prohibit by injunction the Defendant from engaging in unlawful employment practices;
- b. Rehire Plaintiff; and
- c. Reinstatement Plaintiff to the position and pay grade which Plaintiff held but for the unlawful employment actions of Defendant.

#### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff, Derwin Cockerham, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; exemplary damages, together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

Derwin Cockerham

By: Derwin W. Cockerham  
Derwin Cockerham, *Pro se*  
502 Fuller Drive  
Cedar Hill, Texas 75104

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Cockerham, Derwin

## DEFENDANTS

Rose, Matthew  
Watkins, Jason(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

DALLAS RECEIVED

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Prose  
Derwin Cockerham  
503 Fuller Dr.  
Cedar Hill, TX 75104

Attorneys (If Known)

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

3-11CV0277-B

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 PTF ☒ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 PTF ☒ 4 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF Foreign Nation ☐ 6 PTF ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment - Race <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Title VII Civil Rights Act 1964

Brief description of cause:

Race Discrimination

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

UNKNOWN

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ NoVIII. RELATED CASE(S) (See instructions)  
PENDING OR CLOSED:

JUDGE

DOCKET NUMBER

DATE 2/14/11

SIGNATURE OF ATTORNEY OF RECORD

Derwin W. Cockerham, prose

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE